

**Questions and Answers on the
Invitation to Apply for
“Program for Background Checks
for
Employees with Direct Access to Individuals Who Require Long Term Care”**

Sponsored by the:

**Centers for Medicare & Medicaid Services
CFDA No. 93.785**

August 2004

REMINDERS

The deadline to submit applications is Thursday, September 30, 2004.

All application materials must be submitted by the due date. No materials will be accepted after that date.

Applications submitted by facsimile (fax) transmission will not be accepted.

ADDITIONAL CLARIFICATIONS

- 1. If a state does not currently have the necessary statutory requirements in place, but presents as part of its application, the plan, commitment and timetable for legislative action, and fully intends to get what is needed, but it doesn't happen (for whatever reason), what happens then?**

If a state is selected to participate in the pilot based on its commitment and plan to obtain the necessary state authority and is subsequently unable to obtain the necessary authority (for whatever reason), CMS has the right to require a phase-down of the pilot program in that state.

2. Please provide clarification regarding required facility types. Are hospitals a required facility type?

Only Long Term Care Hospitals and hospitals that have "swing beds" are required facility types. Other hospital types (e.g., short-term acute care, etc) are not required facility types.

3. As the lead agency, the state has to provide a mechanism that enables the applicant to appeal the accuracy of information to the appropriate agency (e.g., FBI). The procedures established must ensure the appeals are processed timely. How can a state ensure that another agency will process the appeals timely?

CMS is looking for applications that demonstrate a coherent management scheme in which contributions from various agencies are effectively managed. With regard to the appeals process, as required by section 307 of the MMA, the state must, in its pilot design, develop a process in which a prospective applicant may appeal the results of the background check.

There are various reasons for which a prospective employee may wish to appeal the results of a background check. These include, but are not limited to, 1) inaccurate information obtained through the checking process (registries, state criminal history records, or national criminal history records); 2) the interpretation (by state agency or LTC provider) of information obtained; or 3) appeals on basis of rehabilitation.

Because of the multiple reasons for which a prospective employee who is denied employment on the basis of a background check, may file an appeal, the state must ensure that the overall process is coordinated amongst the various agencies involved, and that the prospective employee is afforded due process. While some information may be obtained from the search of national criminal records, it is at the state level (or provider level if delegated by state procedure) where the interpretation of that information and fitness determination occurs. For example, if a fitness determination is made based on incomplete information (e.g., arrest information with missing disposition) the state should have policies & procedures in place for tracking down the missing disposition.

4. Must the State exclude from employment, any person with a "relevant crime" as included in Section 1128(a) of the Social Security Act? Or, can the State consider evidence that the person is rehabilitated?

It will be at the discretion of the state, in accordance with state law, to permit the rehabilitation of individuals with previous convictions as part of their pilot design. (See page 37 of the solicitation for more info). If a state chooses to permit rehabilitation of individuals with previous convictions, the application should include a description of the criteria that will be used to evaluate an individual's fitness for employment and any additional steps that may be taken to prevent these individuals from relapsing.

5. Will CMS consider only facility-based employee checks, or can background checks conducted for the purpose of licensing and/or certification of professionals who work in long-term-care be considered for the pilot?

Regardless of the methodology used, the end result must be compliance with the requirements of the pilot program.

The state's pilot design should include methodology to ensure that a background check is performed on all prospective direct patient access employees of LTC facilities or providers participating in the pilot. The state must have a mechanism in place to ensure that a background check is conducted on every prospective direct patient access employee at the point in time that an individual is being hired for a job, rather than just on a routine cycle for licensure or certification.

6. Where background checks are conducted for professional certification, such as with CNAs, our state does not monitor where the CNA later becomes employed. Would the absence of a mechanism to determine where the CNA is employed preclude our state from participation?

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7. Must all provider types participating in the pilot be Title19 certified? For example, our state has some long-term-care facilities that are private pay and other residential care facilities that are not federally funded.

For the purposes of this pilot program, background checks are required for prospective employees of long-term care facilities and providers who receive payment under Title 18 & Title 19 of the Social Security Act. If a state chooses to incorporate non-participating LTC facilities and providers into the design of their overall background check program, such extension should represent only an incidental use of grant funds.

8. If a state currently charges a "processing fee" for applicants, will they be able to continue to charge?

If a state currently charges long-term care facilities, providers or potential applicants a fee to conduct a background check, the state may continue to charge the same fee if selected to participate in the pilot program.

9. If yes, will the grant money be spent to reimburse the provider/applicant for paying the cost of the fee?

The state, in submitting their proposal, will determine how the grant money will be used, and whether they will use any of the grant money to reimburse the provider/applicant for the cost of the fee. Please note, however, that states proposing to use the grant funding simply to cover the costs associated with an existing program, rather than to improve or expand upon their program will be disadvantaged in the review process (see page 17 of the full solicitation).

10. In the questions from the teleconference, question A3, the first bullet, indicates federal grant funds will be available for the costs of administering the program and conducting the checks. In question F5 it appears as though the states will be evaluated on payment mechanisms.

Federal funds are available for the cost of administering the program, conducting checks or other associated costs. Please note, however, that states proposing to use the grant funding simply to cover the costs associated with an existing program, rather than to improve or expand upon their program will be disadvantaged in the review process (see page 17 of the full solicitation).

Question F5 refers to a state inquiry as to whether or not they would be eligible to participate because they only have two different payment mechanisms within that state. For inclusion in the pilot program, states will not be evaluated on the variety of payment mechanisms they use. Rather, CMS will, to the extent possible, ensure that the overall pilot represents a variety of payment mechanisms on the national level.

11. If grant money is available for the cost of the checks, is this to include the cost from the FBI and our State Bureau, which is typically passed on to the provider?

The state, in submitting its proposal, will determine how the grant money will be used, and whether they will use any of the funding to cover the cost of the checks. If a state determines it is in their best interest to use the grant funding to cover the cost of the checks, the state would not be permitted to also charge the provider that fee.

12. Can grant funds be used to conduct background checks on current employees, as well as prospective employees?

The purpose of the pilot, as stated in Section 307 of the MMA, is to identify efficient, effective, and economical procedures for long-term facilities or providers to conduct background checks on prospective direct patient access employees.

While CMS believes it is the state's decision whether or not to also conduct background checks on current employees, we do not feel it fits within the purpose of the pilot program except as a minor, incidental expense, nor is it the most effective and efficient use of the limited grant funds available. Therefore, we discourage states from including in their proposed budget, the costs associated with conducting background checks on

current employees. However, equipment purchased by the state for conducting background checks on prospective employees (e.g., live scan machines) might also be used for conducting background checks on current employees, as a way to help the state achieve economies of scale for their overall background check program, provided that the use does not interfere with the state's ability to meet the requirements of the pilot.

13. On page 17 under Funding Restrictions (a) Grant funds may be used for any of the following:

1. Costs of data collection and transmission, which may include up to 20% of the costs of dedicated computers, software, IT support, and data transmission costs. On page 39, "equipment costs may not exceed 25% of the total budget."

It is my interpretation that the cost of any hardware/software purchased for live-scan purposes would be subject to the restriction on page 39 limiting it to no more than 25% of the total grant. But is live-scan equipment considered dedicated computers, software, etc. for "data collection and transmission" and thus subject to the 20% cost ceiling? Or is computer equipment intended for the collection and transmission of data more akin to PC's with electronically transmittable data bases?

Yes. Hardware/software purchased for live scan purposes (fingerprint capture) would be subject to the restriction on page 39, limiting it to no more than 25% of total grant award.

The 20% cost ceiling on page 17 refers to computer equipment dedicated to data collection and transmission. For example, this might include data collection for the state's internal tracking processes or those costs associated with the national evaluation.

14. What is an ORI number?

The ORI number is an Originating Agency Identification number that is initially assigned by the NCIC/FBI upon request.

This number identifies the agency as an entity authorized to receive criminal history records through the submission of fingerprint cards and enables those submissions to be tracked and billed appropriately.

15. Would the reporting limitations and procedures for advising an individual of "adverse action" under the FCRA be applicable to the pilot program?

No. The FCRA applies to consumer reports. This is not a database or registry that would be checked as part of a prospective employee's background check pursuant to MMA Section 307.